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June 19, 2000

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Comments in Support of Petition of the Association of Federal Communications Consulting Engineers for Deferral of the Initial MDS and ITFS Two-Way Filing Window

Dear Ms. Salas:

Transmitted herewith, on behalf of BellSouth Wireless Cable, Inc., are an original and four copies of the above-referenced comments. These comments are submitted at the invitation of the Mass Media Bureau, by Public Notice, DA 00-1256 (released June 12, 2000).

Please date-stamp the enclosed "S&R" copy of this filing and return it to the courier delivering this package. Should any questions arise with regard to this filing, please contact the undersigned counsel.

Respectfully yours,

Thomas J. Dougherty, Jr.
Counsel for
BellSouth Wireless Cable, Inc.

Enclosure

cc: Mr. Charles Dziedzic
Ms. Sharon Bertelsen
Mr. David Roberts
Mr. Brad Lerner
(both w/enc.)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Initial Filing Window for	)	
Two-Way Multipoint Distribution	)	Public Notice DA 00-1256
Service and Instructional	)	
Television Fixed Service	)	
Applications	)	

To: Chief, Mass Media Bureau

COMMENTS OF BELLSOUTH WIRELESS CABLE, INC. IN SUPPORT OF PETITION BY ASSOCIATION OF FEDERAL COMMUNICATIONS CONSULTING ENGINEERS FOR DEFERRAL OF INITIAL TWO-WAY APPLICATION FILING WINDOW

BellSouth Wireless Cable, Inc. ("BWC"), by its counsel, hereby respectfully submits these comments in support of the June 6, 2000 petition (the "Petition") of the Association of Federal Communications Consulting Engineers ("AFCCE") to defer the initial application filing window for two-way MDS and ITFS applications for a 130-day period.[1]

I. BWC'S INTEREST

BWC holds Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") channel rights covering approximately 3.5 million homes in Atlanta, Louisville, New Orleans and several large markets in Florida. BWC presently offers digital wireless cable service in New Orleans, Atlanta, Orlando, Jacksonville and Daytona Beach. BWC also operates analog wireless cable systems in Louisville, Kentucky, and Ft. Myers and Lakeland, in Florida. In addition, BWC holds the MDS/ITFS channel rights to serve Miami, FL.

1 These comments are submitted at the invitation of the Bureau, extended by Public Notice, DA 00-1256 (released June 12, 2000).

BWC operates these systems though a combination of MDS channels licensed to it, and MDS and ITFS channels made available to BWC by lease. BWC has spent hundreds of millions of dollars to acquire, build and operate these systems. Needless to say, BWC seeks to ensure that no other party obtains authority to operate any MDS or ITFS channel that would cause unacceptable interference to any MDS or ITFS channel used by or made available to BWC. Further, BWC desires to add two-way capability to its systems and is in the process of preparing applications for two-way authorizations.

BWC has devoted considerable resources to the preparation of applications for two-way authorizations for its MDS/ITFS systems. Those resources have been expended in system planning and development, identification of potential interference cases, procuring interference consents and related matters. In that process, BWC has encountered the same problems that AFCCE recites in its Petition. Based upon BWC's experience, BWC shares AFCCE's opinion that a July filing window will be a regulatory train wreck composed of a potentially large number of defective applications proposing facilities which would cause unlawful interference and which will be met with otherwise unnecessary petitions to deny. Deferring the initial two-way MDS/ITFS window for a modest, 130-day period will promote an orderly and successful initial filing window, and will avoid the very real prospect that the initial filing window could become a protracted, FCC staff-intensive, licensing process.

II. A MODEST DELAY IN THE WINDOW IS WARRANTED

As the Bureau knows all so well, the engineering rules for hub and response systems for two-way operation are extraordinarily complex. As stated by the Commission, "[w]ith respect to

the complexity of the Methodology, it is, of necessity, not a simple procedure...."[2] It is essential for licensees to have access to efficient and accurate software tools both to prepare applications and also to review applications filed by others for two-way MDS/ITFS authorizations. As explained by the Commission:

> The process we adopt today for two-way applications represents a fundamental shift from the Commission's traditional review function in MDS/ITFS licensing and from our review function in other areas of MDS/ITFS licensing, for example in applications for new ITFS stations. It will require increased diligence by MDS and ITFS licensees in tracking and monitoring the impact of applications by other parties on their own services.[3]

Performing engineering calculations required by the FCC's new rules manually or with pre-existing software tools is highly impractical if not impossible because of the unique and complex requirements of FCC "Appendix D." It is absolutely necessary, both from a practical and a legal standpoint, that MDS and ITFS licensees have new software tools that will work within the two-way engineering rules efficiently and accurately. Otherwise, the Commission's desire to have a streamlined and fair two-way authorization process will not be realized. As is shown below, however, given the current state of the software and its late availability, proceeding with the filing window at this time will necessarily give rise to serious practical and legal issues.

A. A July 2000 Filing Window Will Undermine the FCC's Expedited Licensing Process.

A central concern raised in the AFCCE Petition is that the only two commercially-available software programs have until quite recently been incomplete works-in-progress. As

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2 *Amendment of Parts 21 and 74*, 13 F.C.C. Rcd. 19112, 19142 (¶ 55) (1998) (emphasis supplied) (hereinafter *Two-Way Report & Order*).

3 *Two-Way Report & Order, at* 19147 (¶ 63) (emphasis supplied).

reported in the attached declaration of Robert Gehman, Jr., P.E.,[4] the licensors of those first-generation programs have discovered that each of the programs have had significant flaws that rendered the programs either useless for certain necessary functions, or required an unacceptably long time to complete those functions. These flaws were discovered after the programs were sold, and as they have been used to design two-way systems and to prepare the engineering demonstrations required by the FCC Form 331. Significantly, the flaws were not corrected simultaneously, but serially through the release of a litany of software "updates." The correction of these shortcomings often required engineers to discard and totally repeat previously completed complex engineering work, sometimes over and over. In short, the repeated revisions of the software rendered system design and application preparation work during that time period very time-consuming, laborious and, for the most part, fruitless. Engineers who use CelPlan's software, for example, have seen those problems compounded by the lack of any user instructional manuals, documentation or help screens, and the resultant need to repeatedly stop work, contact CelPlan and await CelPlan's response, to determine how to use the software.[5] While these software programs have been commercially available for just two and one-half months, engineers have struggled with the programs throughout that time and, as stated by AFCCE, the engineering community is not ready for a July initial window. Given the short time remaining before the end of the window to prepare applications, BWC shares AFCCE's concern that a July window will attract a large number of applications that contain errors and are poorly

4 BWC's resources for preparing its two-way applications include the services of Kessler & Gehman Associates, Inc. The experience and opinions of that engineering consulting firm on the two-way engineering process are set forth in the declaration of Robert Gehman, Jr., P.E. attached to this pleading as Attachment I.

5 While BWC has no direct experience with the EDX software package, it appears that it too has significant deficiencies and limitations which also are being corrected. *See* Petition.

prepared. In this event, the Commission's hope of a rapid "automatic grant" process will be dashed, as the process becomes clogged by an FCC staff-intensive review of petitions to deny.

Reviewing the applications of others for potential interference is also problematic. It is virtually impossible for BWC to analyze all of the potential interference cases involving it that may arise in the initial two-way window filings using CelPlan's CelFCC software module, as it now exists. This problem arises in part from the fact that the CelFCC software will not accept a download of an FCC "Appendix D" file from another applicant's study, thus requiring these interference studies to be conducted by manually inputing all of the relevant engineering data from an application under study. As a result, BWC anticipates that very simple interference studies will consume many hours. However, CelPlan has announced that it will improve this software so that it can serve as an efficient interference analysis tool. The grant of AFCCE's Petition will provide CelPlan with additional time to make those improvements.

The inability of CelPlan's CelFCC module to support the review of applications for interference will result in the licensing of interfering systems, because the process will be relying upon licensees with flawed interference detection tools to vet applications for interference. This condition could cause a flood of petitions to deny which will delay authorizations while the Commission's staff goes through the laborious process of individually checking the engineering of each application subject to a petition. And while the Commission has stated that it will force licensees to cease operations in the event that interference occurs, it simply makes no sense to look toward suspending service to consumers as a remedy, when all one had to do was forebear a modest amount of time until the software had matured to the point where it would provide the predictive accuracy needed to detect interference prior to licensing.

B. A July 2000 Filing Window Will Give Rise to Serious Legal Issues.

These practical problems with a July filing window also have legal implications that the Bureau must consider. Parties-in-interest to two-way applications will not be able to gather the information they need to determine whether they would be aggrieved by the grant of an application and to file petitions to deny during the petition period. In effect, these parties-in-interest will have been unlawfully deprived of their rights granted under Section 309(d) of the Communications Act[6] to file petitions to deny. What could have been an orderly and efficient application window likely will become a United States Court of Appeals proceeding.

The applicant bears the burden of proof that its proposed stations will not cause harmful interference. The Commission requires that the interference analyses submitted with applications "must be sufficiently complete and accurate for any competent party to verify the validity of the interference analyses."[7] When affected parties cannot determine whether an applicant has met this burden because of the flawed nature of the engineering demonstration presented by the applicant, it stands to reason that the applicant has not met its burden and is wide open to petitions to deny.

BWC views the inadequacies in interference detection programs as a matter that should be of great concern to the Commission. The prevention of harmful interference among licensees is one of the most fundamental roles of the Commission. Shifting this function to licensees may be justifiable, but to do so when licensees are demonstrating to the Commission that licensees

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6 Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d).

7 *Two-Way Report & Order*, at 19142-43 (¶ 56).

lack adequate interference measuring tools would be arbitrary and capricious and, hence, unlawful.[8]

C. The FCC's Own Experience Dictates A Delay Of The July 2000 Filing Window.

The danger of relying upon inadequate software for the processing of large bodies of radio applications is well known in the former "Land Mobile Branch" of what is now the Wireless Telecommunications Bureau and counsels the caution advocated by AFCCE. In the last decade, the Land Mobile Branch relied upon commercial software to process a large number of "wide-area" Specialized Mobile Radio Service (SMRS) applications. But, because of a flaw in the software, the Land Mobile Branch's plan to use the software to speed licensing degenerated into an application processing nightmare. Applications filed in late 1993 and early 1994 did not reach final disposition until the end of 1999.[9] The short delay in the initial two-way window urged by BWC and AFCCE will go far to ensuring that the Land Mobile Branch's experience is not repeated in the initial two-way window.

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8 5 U.S.C. § 706(2) (arbitrary and capricious agency action is unlawful).

9 *Various Petitions for Digital Wide-Area 800 MHz Trunked Specialized Mobile Radio*, 15 F.C.C. Rcd. 961 (2000). A copy of this case is attached hereto as Attachment II for convenience of reference.

III. CONCLUSION

For all of these reasons, BellSouth Wireless Cable, Inc. respectfully requests that the Mass Media Bureau grant the Petition of the Association of Federal Communications Consulting Engineers.

Respectfully submitted,

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Its Attorneys

June 19, 2000

ATTACHMENT I

DECLARATION OF ROBERT GEHMAN, JR., P. E.

I, Robert Gehman, Jr., hereby declare as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a professional engineer registered in the states of Florida, Maryland, and Mississippi. I am president of Kessler and Gehman Associates, Inc., telecommunications consulting engineers. My qualifications are a matter of record with the Federal Communications Commission having been presented on numerous occasions during the past 30 years. Kessler and Gehman Associates has provided engineering services to applicants for, and licensees of, stations in the Instructional Television Fixed Service ("ITFS") and in the Multipoint Distribution Service ("MDS") since 1967.

3. Kessler and Gehman Associates has been retained by BellSouth Wireless Cable, Inc., to assist in the preparation of applications for two-way licenses in the ITFS and MDS services and to evaluate the affects of other two-way filings on the wireless cable facilities operated by BellSouth Wireless Cable, Inc.

4. A reasonable delay in the FCC MDS/ITFS two-way Filing Window best serves the interest of MDS and ITFS licensees for the reasons described below. The FCC announced the opening of the Initial Filing Window for two-way on March 23, 2000. This represents an advance notice of about 110 days for the design of two-way systems to protect incumbent stations and for the preparation of applications meeting some of the most stringent filing requirements of my 35 years in dealing with the FCC. The software required to design the stations and generate the data file required for the application was not ready until the first week of June resulting in an effective reduction of the FCC announcement of the Initial Filing Window to only about 30 days.

5. There is insufficient time to become proficient in the use of the software, to conduct reasonable two-way designs, and also prepare certifiable applications by the filing

deadline. The final FCC Methodology[1] was not issued until the end of April 2000. As a result, stable engineering software has only been available since the first week in June of this year, leaving only 30 days until the window opening. The software was available for purchase in May, however, repeated software updates have hampered its use and caused much of the initial work to be rerun. Some revisions caused complete software failures due to interoperability issues with other modules of the program. For example, updates of CelPlan's[2] CelFCC module became incompatible with the existing operating version of the CelPlaner program until a new compatible version of CelPlaner was delivered and loaded resulting in lost time.

6. No documentation manuals or help screens are available for the CelFCC MDS/ITFS two-way module. This has significantly lengthened the learning curve timeframe to effectively operate the tool. We have recently learned documentation may not be available until December of this year, well after the current July Filing Window. Therefore, the only option available to us to resolve software problems is primarily through e-mail and some telephone correspondence within CelPlan's availability. Answers are not always clear and crisp, often resulting in more questions than answers further exacerbating the problem. Some questions have not been answered for several hours adding to the slow learning and problem resolution process.

7. We have attended all training classes available to learn how to operate this very complex software program. Nevertheless, operation of the software has been difficult at best due to the large number of variables that can be entered that can alter the results. The three-day training seminar provided a general overview of the software, but it was not sufficient to begin actual design work. Little time was spent explaining the intricacies of the many settings that have the possibility of generating erroneous results. Neither was any time taken to explain the interrelationships between the many input and output files.

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[1] "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems", Version 1.29 dated April 21, 2000, also known as "Appendix D".

[2] CelPlan Technologies, Inc. and EDX, Inc. are the only known computer programs commercially available to meet the design and filing requirements of FCC's Appendix D.

8. Old data from previous studies is not always overwritten by new data during the iterative analysis process of preparing an application. Therefore, confidence is lost on the results unless the old file is cleared before new data is entered. This also slows the market development process.

9. We were notified that the June 2, 2000 revision would be the last until the end of the filing window. The June 2 revision resulted in lines being displayed randomly on the screen when a particular software function was invoked, so some software problems were still present after the June 2 freeze. The revision to correct the problem arrived four days later. During that time we had no choice but to proceed with caution and question all results produced by the tool, wondering what, if anything, was correct.

10. No module currently exists to load an Appendix D file from another operator's study. Therefore, we must either cut and paste or key-in entries into our database for confirmation assessment. This will result in many additional hours to evaluate the affects of a two-way filing in an adjacent market.

11. The design process is basically one of try-and-revise. It is difficult to forecast the locations and degree of interference from hundreds of response stations to thousands of study points in an incumbent's protected service area. Reasonably small studies with limited frequencies to analyze generally take a few hours to run. Some seem to work and others are questionable. If we study several or all frequencies in a market at one time, the run time will increase accordingly to perhaps more than a day. If errors occur, all that time is lost and another study must be conducted once the errors are resolved. Until confidence is achieved through routine accurate results, too much precious time is at risk to try lengthy complex analyses.

12. With limited experience with the software, two weeks at best in spite of numerous problems, there is no intuitive ability to question the accuracy of the study results. Therefore, some manual confirmation of the results should be performed to develop

confidence in the accuracy of the end product. We have not yet achieved confidence in simple tasks. Therefore, how can we have confidence in more complex projects?

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge and belief.

KESSLER AND GEHMAN ASSOCIATES, INC.

Robert Gehman, Jr., P.E.
President

Date: June 15, 2000

ATTACHMENT II

Before the Commission
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
Various Petitions For	)
Digital Wide-Area 800 MHz	)
Trunked Specialized Mobile Radio	)

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 1999 **Released: January 14, 2000**

By the Commission:

I. INTRODUCTION

1. In this Order we address multiple petitions for reconsideration[1] and applications for review[2] filed by various licensees (collectively, Petitioners) who applied for site-specific authorizations in the 800 MHz Specialized Mobile Radio (SMR) service prior to our adoption of geographic area licensing and auction rules. Between November 1993 and August 1994, the Commission received over 40,000 applications for 800 MHz channels, primarily from licensees seeking to establish wide-area SMR systems.[3] To expedite processing of this application backlog, in December 1994, the Land Mobile Branch, Wireless Telecommunications Bureau (Bureau), requested that applicants submit electronic versions of their application information so that the Commission could process the information through the use of software developed by a coalition of industry trade associations. On March 17, 1995, the Bureau granted several thousand applications by Public Notice based on the results of this electronic processing.[4] However, on April 17, 1995, these grants were made conditional after the Bureau became

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[1] Petitions for Further Reconsideration were filed by Industrial Communications & Electronics, Inc. (IC&E) on Oct. 9, 1996 and Oct. 23, 1996, respectively, William R. Miller (Miller) on July 17, 1996, Motorola, Inc. and Castle Tower Corp. (Castle) on Sept. 13, 1996, Palmer Communications Inc. (Palmer) on Sept. 12, 1996, Western Wireless (Western) on Oct. 23, 1996; A Petition for Partial Reconsideration was filed by Davis Electronics Company, Inc. (Davis) on Oct. 22, 1996.

[2] Applications for Review were filed by Advanced MobileCom of Texas, L.P. (AMI) on Oct. 17, 1996, Motorola Inc. and Nextel Communications, Inc. (Motorola) on Sept. 24, 1996, Nextel Communications, Inc. (Nextel) on August 8, 1996, Pittencrieff Communications Inc. (PCI) on Sept. 13, 1996, and Speed-Net on November 26, 1996.

[3] Wide-area SMR systems generally operate by reusing a large number of frequencies at multiple low-powered digital base stations rather than by the use of the more traditional single transmitter site arrangements.

[4] "Wireless Telecommunications Bureau Processes Over 40,000 and Grants More Than 4,500 Applications for 800 SMR, Business, Industrial/Land Transportation and General Category Channels Received Between November 9, 1993 and August 10, 1994," *Public Notice*, mimeo No. 52823 (rel. March 17, 1995) (*March 17, 1995 Public Notice*).

aware of problems related to the processing software.[5] As a result, the Bureau worked with the industry to modify the software, after which all 40,000 applications were reprocessed. On October 31, 1995, the Land Mobile Branch issued a second Public Notice superseding the first public notice and granting over 6,000 applications.[6]

2. In this proceeding, Petitioners have sought reconsideration and review of the *October 31, 1995 Public Notice* because certain of their applications for wide area systems were not granted. Petitioners argue, *inter alia*, that their applications should have been granted because they were consistent with other wide-area requests previously granted by the Commission. Petitioners further contend that, had the applications been manually rather then electronically processed, the applications would have been granted.[7] Petitioner's prior requests for reconsideration were denied by the Land Mobile Branch[8] and the Licensing Division[9] of the Bureau.[10] Petitioners therefore filed the various

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[5] Grant of Applications for 800 MHz SMR Business, Industrial/Land Transportation and General Category Channels Received Between November 8, 1993 and August 10, 1994, *Order*, 10 FCC Rcd. 6635 (1995) (*April 17, 1995 Order*). The *April 17, 1995 Order* did not otherwise disturb the grants made in the *March 17, 1995 Public Notice.*

[6] "Wireless Bureau Vacates and Supersedes Grants to SMRS Announced by March 17, 1995 Public Notice," *Public Notice*, Mimeo No. 60472 (rel. Oct. 31, 1995) (*October 31, 1995 Public Notice*). Although some of the applications granted in the *March 17, 1995 Public Notice* were not granted in the *October 31, 1995 Public Notice*, most of the grants in the *March 17, 1995 Public Notice* also were contained in the *October 31, 1995 Public Notice.* In addition, the *October 31, 1995 Public Notice* contained a certain number of new grants.

[7] AMI Petition for Reconsideration (Nov. 29, 1995); Castle Petition for Partial Reconsideration (Nov. 29, 1995); Davis Petition For Reconsideration (Nov. 30, 1995); IC&E Petition for Partial Reconsideration (Nov. 30, 1995); Miller Petition for Partial Reconsideration (Nov. 30, 1995); Motorola Petition for Partial Reconsideration (Nov. 29, 1995); Nextel Petition for Reconsideration (Nov. 30, 1995); Palmer Petition for Partial Reconsideration (Nov. 29, 1995); PCI Petition for Reconsideration (Nov. 30, 1995); SpeedNet Request for Reconsideration (Sept. 13, 1996); Western Petition for Partial Reconsideration (Nov. 30, 1995).

[8] The Land Mobile Branch denied the petitions for partial reconsideration by Castle, IC&E, Miller, Palmer, Western, and the petitions for reconsideration filed by Nextel and PCI. *See* Letter from Terry L. Fishel, Chief, Land Mobile Branch, to Marilyn I. Suchecki, Esq., Pamela Gaary, Esq., Lukas, McGowan, Nace & Gutierrez (June 17, 1996); Letter from Terry L. Fishel, Chief, Land Mobile Branch, to Robert S. Foosaner, Nextel Communications, Inc. (July 9, 1996); Letter from Terry L. Fishel, Chief, Land Mobile Branch to Elizabeth R. Sachs, Esq., and Marilyn I. Suchecki, Esq., Lukas, McGowan, Nace & Gutierrez (Aug. 14, 1996); Letter from Terry L. Fishel, Chief, Land Mobile Branch to Elizabeth R. Sachs, Esq. Marilyn I. Suchecki, Esq., Lukas, McGowan, Nace & Guttierrez (Aug. 14, 1996); Letter from Terry L. Fishel, Chief, Land Mobile Branch to Marilyn I. Suchecki, Esq., Ashlea Ball Ebeling, Lukas, McGowan, Nace & Gutierrez (Sept. 9, 1996); Letter from Terry L. Fishel, Chief, Land Mobile Branch, to Marilyn I. Suchecki, Esq., Pamela Gaary, Esq., Lukas McGowan, Nace & Gutierrez (Sept. 23, 1996).

[9] The Licensing Division denied the petitions for reconsideration filed by AMI and Davis. *See* Letter from Walter Boswell, Chief, Licensing Division, to Alan S. Tilles, Esq., Meyer, Faller, Weisman and Rosenberg (Sept. 17, 1996); Letter from Walter Boswell, Chief, Licensing Division, to Terry J. Romine, Esq., Lukas, McGowan, Nace & Gutierrez (Sept. 23, 1996).

[10] Under a Wireless Telecommunications Bureau reorganization, the Licensing Division was eliminated and its functions transferred to other divisions within the Bureau. The former Land Mobile Branch of the Licensing Division was incorporated into the Licensing and Technical Analysis Branch of the Commercial Wireless Division.

3. pleadings now pending before us. For the reasons discussed below, we (1) grant the above-referenced petitions for reconsideration and applications for review; and (2) reinstate and grant Petitioner's applications for the frequencies listed in Attachment A.

II. BACKGROUND

4. Prior to 1995, the Commission authorized 800 MHz SMR licenses on a site-by-site and frequency-by-frequency basis. Operating from single transmitter base stations, licensees initially used analog technology to provide primarily dispatch radio services.[11] Over time, however, growing demand, limited capacity, and the development of uses for SMR spectrum other than dispatch service caused licensees to seek authorization for the use of digital technology in place of analog operations and the replacement of high-powered, single transmitter sites with multiple, low-powered base station configurations in order to increase spectrum efficiency. SMR licensees also sought to aggregate contiguous, individual market areas into single integrated wide-area networks.

5. In 1991, the Commission began authorizing these wide-area systems for 800 MHz channels.[12] As part of the wide-area system authorizations, the Commission granted licensees limited waivers of the Commission's construction rules due to the expense and complexity of implementing digital, multiple transmitter configurations.[13] In authorizing such systems, the Commission limited the scope of requested wide-area systems first to the geographic area defined by the contiguous and overlapping service areas of underlying stations that had been 1) constructed and placed in operation, and 2) currently licensed to or managed by the applicants.[14] Such contiguous and overlapping service areas constituted the "footprint" of a requested wide-area system.

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[11] *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services, GN Docket 93-252, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *First Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd. 1463, 1474, ¶ 4 (*800 MHz SMR First Report and Order*).

[12] *See* Request of Fleet Call, Inc., For Waiver and Other Relief To Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, *Memorandum Opinion and Order*, 6 FCC Rcd. 1533 (1991); Letter from Richard J. Shiben, Chief, Land Mobile and Microwave Division, Private Radio Bureau, to George Hertz, President, Advanced MobileComm of New England, Inc. (dated April 13, 1992). The Commission first authorized the use of wide-area systems in the 900 MHz SMR service in 1989. *See* Request of American Mobile Data Communications, Inc., For Waiver and Other Relief to Enable the Construction of a Nationwide Two-Way Mobile Data Communications Network, *Memorandum Opinion and Order*, 4 FCC Rcd. 3802 (1989).

[13] *See* Letter from Ralph A. Haller, Chief, Private Radio Bureau, to David E. Weisman, Meyer, Faller Weisman and Rosenberg, 8 FCC Rcd. 143 (dated Dec. 23, 1992) (*Weisman Letter*). Conventional SMR systems were required by the Commission's rules to be constructed and operating within eight months of license grant and trunked SMR systems were subject to a twelve-month construction period. 47 C.F.R. §§ 90.631(f), 90.633(d).

[14] *Weisman Letter*, 8 FCC Rcd. at 143.

6. These wide-area system arrangements provided SMR operators the ability to expand the geographic scope of their services and aggregate large numbers of channels to provide service comparable to other service providers such as cellular. However, the Commission later found the site-by-site, channel-by-channel licensing scheme to be cumbersome and inefficient. As a result, in August 1994, the Commission adopted the *CMRS Third Report and Order*, concluding, *inter alia*, that the 800 MHz SMR service could compete with other commercial mobile radio services and should be licensed on a geographic area basis and subject to the competitive bidding process.[15] In light of the fundamental changes adopted in the *CMRS Third Report and Order* affecting the 800 MHz SMR service, the Commission suspended the acceptance of site-specific SMR applications as of August 9, 1994, pending the adoption of new licensing and service rules for the 800 MHz SMR service.[16]

7. Prior to the application freeze, however, the Commission had received over 40,000 wide-area applications for 800 MHz channels between November 8, 1993, and August 9, 1994, primarily from licensees seeking to establish or expand wide-area systems that remained subject to then existing 800 MHz service rules. The immense number of applications that were filed and the limited resources that the Land Mobile Branch was able to devote to processing the applications created a tremendous backlog. To help alleviate this backlog, a coalition of industry trade associations[17] developed a computer program to automate the processing of the applications and offered the software to the Commission for use in its application review process. The Commission accepted the Industry Coalition's offer of assistance. In December 1994, the Land Mobile Branch directed applicants for wide-area systems to submit their application data on electronic disk in a specific format. Each applicant was required to supplement its paper applications with the applicant's requested sites and frequencies, data regarding co-channel stations of other licensees, and data identifying "friendly" co-channel stations.[18] The electronically submitted applications were then processed using the Industry Coalition's software.

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[15] Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, *Third Report and Order*, 9 FCC Rcd. 7988, 8042, ¶ 94 (1994) (*CMRS Third Report and Order*).

[16] *Id.* at 8047-8048, ¶ 108. Service rules for the upper and lower channels of the 800 MHz SMR service were adopted in the *800 MHz SMR First Report and Order* and Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services, GN Docket 93-252, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, PR Docket No. 93-144, 12 FCC Rcd 19079 (1997) (*800 MHz SMR Second Report and Order*).

[17] The American Mobile Telecommunications Association, Inc., the Industrial Telecommunications Association, Inc., and the Personal Communications Industry Association (collectively, the Industry Coalition).

[18] *See e.g.* Letter from W. Riley Hollingsworth, Deputy Associate Bureau Chief, Office of Operations, Wireless Telecommunications Bureau, to Dana B. Fisher, Western Wireless (Dec. 28, 1994). "Friendly stations" constituted the underlying consenting stations and those stations owned and/or managed by the applicant.

8. On March 17, 1995, the Land Mobile Branch released a Public Notice granting over 4,500 of the 40,000 pending applications based on the use of the Industry Coalition's software. A programming flaw in the software, however, prevented the computer program from properly identifying friendly co-channel stations or applications and, as a result, errors occurred in the processing of the applications. On April 13, 1995, the Industry Coalition sought reconsideration of the grants made in the *March 17, 1995 Public Notice* and requested permission to make modifications to its software so that the Land Mobile Branch could reprocess the applications and issue a revised list of granted licenses.[19]

9. In light of the Industry Coalition's petition for reconsideration, on April 17, 1995, the Bureau modified all of the authorizations announced in the *March 17, 1995 Public Notice* to be conditional, pending the disposition of the Industry Coalition petition.[20] Subsequently, the Land Mobile Branch concluded that certain modifications to the software were needed.[21] To ensure compatibility with the Industry Coalition's modified software, the Land Mobile Branch directed wide-area applicants to review the data diskettes previously submitted to confirm that formatting requirements were complied with and asked applicants to resubmit their applications in a specific electronic format in the event that applicants deemed that resubmission of information was necessary.[22] The Land Mobile Branch stated that the purpose of the request for resubmitted electronic data was to replicate the previous data submitted with the applications in order to demonstrate compliance with either the Commission's consensual or technical short-spacing rules.[23] Following the receipt of resubmitted data, the Branch used the modified software to reprocess the 40,000 applications.

10. On October 31, 1995, the Bureau released another Public Notice that superseded the *March 17, 1995 Public Notice*, vacated the March 17 grants, and granted more than 6,300 applications for SMR service frequencies.[24] Because a number of applicants did not submit all the necessary data in electronic format, the modified Industry Coalition software did not recognize that certain applicants had consent to obtain frequencies that were short-spaced with co-channel licensees.[25] These applications were among those that were not granted. The applications that were not granted were placed on a waiting list pursuant to former rule section 90.611(d).[26] All applications placed on waiting lists for the 800 MHz

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19 Industry Coalition's Petition for Reconsideration at 1.

20 Grant of Applications for 800 MHz SMR Business, Industrial/Land Transportation and General Category Channels Received Between November 8, 1993 and August 10, 1994, *Order*, 10 FCC Rcd. 6635 (1995).

21 *See e.g.* Letter from Terry L. Fishel, Chief, Land Mobile Branch, to Susan H.R. Jones, Esq. and Russell H. Fox, Esq., Gardner, Carton & Douglas, dated May 12, 1995.

22 *Id.*

23 *Id.*

24 *See October 31, 1995 Public Notice.* Due to the discrepancies between the results of the two software processings, the Bureau granted the Industry Coalition's request to set aside the grants made in the *March 17, 1995 Public Notice. Id.*

25 *See* para. 15 *infra.*

26 47 C.F.R. § 90.611(d) (1995).

band were subsequently dismissed by the Commission in the *800 MHz First Report and Order*[27] and the *800 MHz Second Report and Order*.[28]

11. The Petitioners in this matter sought to establish wide-area SMR systems by applying for digital facilities at multiple sites which they proposed to operate using only those frequencies assigned to underlying participating analog stations.[29] Because certain applications submitted by Petitioners were not granted by the *October 31, 1995 Public Notice*, Petitioners requested reconsideration by the Bureau of the October processing results.[30] In their respective petitions, Petitioners argued that even after the software used to process applications in March 1995 was modified, a flaw in the software continued to exist that prevented the grant of applications for some frequencies when the applications were reprocessed in October 1995. Petitioners also asserted that their wide-area requests were consistent with other wide-area requests previously granted by the Commission.[31] Furthermore, Petitioners stated that had the Land Mobile Branch manually processed the applications under its ordinary rules and procedures that were applicable at the time, the applications would have been granted.[32]

12. These petitions were denied by the Licensing Division and the Land Mobile Branch.[33] The Division and the Branch stated that prior to the March 1995 processing, wide-area applicants were contacted and specifically asked to provide, in a specific electronic format, a file listing all consenting stations and stations owned or managed by the applicant so that the software could identify friendly

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[27] In the *800 MHz First Report and Order*, the Commission dismissed all applications on the waiting list in the upper 200 channels of the 800 MHz band. *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, PR Docket No. 93-144, 11 FCC Rcd. 1463, 1635 (1995) (*800 MHz First Report and Order*).

[28] In the *800 MHz Second Report and Order*, the Commission dismissed all applications in the lower 230 channels of the 800 MHz band. *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Second Report and Order*, PR Docket No. 93-144, 12 FCC Rcd 19079, 19173 (1997).

[29] *See* AMI at 1; Castle at 2-3; IC&E at 3; Miller at 2; Davis at 2; Motorola at 1-2; Nextel at 2; Palmer at 2; PCI at 2; SpeedNet at 1; Western at 2.

[30] *See* note 6.

[31] *See e.g.* Castle Petition for Partial Reconsideration at 1-2 (Nov. 29, 1995); IC&E Petition for Partial Reconsideration at 1-2 (Nov. 30, 1995); Miller Petition for Partial Reconsideration at 1-2 (Nov. 30, 1995); Palmer Petition for Partial Reconsideration at 1-2 (Nov. 29, 1995); Western Wireless Petition for Partial Reconsideration at 2-3 (Nov. 30, 1995).

[32] *See e.g.* Castle Petition for Partial Reconsideration at 3-4; IC&E Petition for Partial Reconsideration at 3-4; Miller Petition for Partial Reconsideration at 3-4; Palmer Petition for Partial Reconsideration at 3-4; Western Wireless Petition for Partial Reconsideration at 5-6.

[33] Certain petitions were partially granted. *See e.g.* Motorola at 2-3. Because not all applications that were the subject of the petitions were granted, these petitioners sought further reconsideration.

stations.[34] After errors were detected in the March 1995 processing results, these applicants received another opportunity to provide the necessary data prior to the October 1995 reprocessing.[35] The Division and Branch noted that in both instances, Petitioners failed to provide complete information in the required electronic format.[36]

13. In response to the decision to deny their petitions, Petitioners filed the various pleadings now pending before us. In their respective pleadings, Petitioners argue that the applications they submitted complied fully with the Commission's rules and that the failure to grant these applications was arbitrary and capricious.[37] They argue that we may not deny electronically processed applications that would have been granted had they been processed manually.[38] Petitioners also argue that there was no formal rule requiring applicants to submit application data for wide-area SMR systems in diskette or electronic format.[39] Accordingly, assert Petitioners, because the applications were in proper form and conformed to all rule requirements as of the date of filing, we are obligated to grant the applications in their entirety.

III. DISCUSSION

14. By this Order, we grant the Petitioners' applications for review and petitions for reconsideration. Although Petitioners failed to provide friendly station file information in electronic format, as directed by the Land Mobile Branch and Licensing Division, we find that Petitioner's manually filed applications are complete and demonstrate compliance with our rules for short-spaced facilities. Therefore, we reinstate and grant the applications for the frequencies listed in Attachment A of this Order.[40]

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[34] *See e.g.* Letter from Terry Fishel, Chief, Land Mobile Branch, to Elizabeth R. Sachs, Esq., Marilyn I. Suchecki, Esq., Lukas, McGowan, Nace & Gutierrez (Aug. 14, 1996); Letter from Walter Boswell, Chief, Licensing Division, to Terry J. Romine, Lukas, McGowan, Nace & Gutierrez (Sept. 23, 1996).

[35] *Id.*

[36] *Id.*

[37] *See e.g.* Castle at 8; Nextel at 2; PCI at 5-6; Western at 8.

[38] *See e.g.* Miller at 7-8; Motorola at 4; Nextel at 2-3; PCI at 5; Speed-Net at 5.

[39] AMI at 4; PCI at 5 (citing Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order*, MM Docket No. 94-131, 10 FCC Rcd. 9589 (1995)).

[40] In the period since these petitions were filed, the Commission conducted an auction of the upper 200 channels of the 800 MHz SMR band from October 28, 1997, to December 8, 1997, in which 523 licenses in 175 Economic Areas were awarded. Further, a number of 800 MHz SMR operators have transferred or assigned their interests to other entities, often to the holder of a geographic area licensee. *See e.g.* In re Applications of Nextel Communication, Inc. - For Transfer of Control of OneComm Corporation, *Order*, 10 FCC Rcd. 3361 (Wir. Tel. Bur. 1995); In re Applications of Motorola, Inc. - For Consent to Assign 800 MHz Licenses to Nextel Communications, Inc., *Order*, 10 FCC Rcd. 7783 (Wir. Tel. Bur. 1995); In re Applications of Dial Page, Inc. - For Consent to Transfer of Control of Dial Call, Inc. SMR and Business Radio Licenses to Nextel Communications, Inc., *Order*, DA 95-2379 (Wir. Tel. Bur. 1995); In re Applications of Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee - For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, *Order*, 13 FCC Rcd 8935 (Wir. Tel. Bur. 1997).
(continued....)

15. SMR systems are generally given interference protection based on a fixed mileage separation from co-channel operations.[41] The typical separation between site-based, co-channel systems is 113 km/70 miles.[42] In certain situations, however, it is technically possible and mutually desirable for co-channel SMR systems to locate their systems closer together than the requisite separation distance. The Commission permits such "short-spacing" without a waiver if: (1) the licensee obtains consent from all affected co-channel licensees within the applicable area;[43] or (2) the licensee makes a technical showing that it will not interfere with co-channel licensees.[44]

16. Petitioners maintain that even as modified after the March 1995 processing run, the Industry Coalition software did not recognize that certain frequencies the applicants sought on a short-spaced basis were grantable because the proposed short-spacing was exclusively with other stations in the applicant's own wide area. They also argue that the software did not recognize instances where short-spaced applications were grantable because the short-spacing had been consented to by adjacent

(Continued from previous page)

Because these events had some bearing on the pending petitions, the Bureau issued letters requesting clarification from Petitioners as to whether the grant of an EA license or subsequent transactions rendered any of the petitions moot and directed Petitioners to withdraw any petitions that were no longer viable. *See e.g.* Letter from Stephen L. Markendorff, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, to Elizabeth R. Sachs, Esq., and Marilyn Suchecki Mense, Esq., Lukas, Nace & Gutierrez, CWD 98-94 (Aug. 13, 1998). Attachment A reflects the applications and frequencies which Petitioners have identified as remaining ripe for our resolution. *See e.g.* Letter from Elizabeth R. Sachs, Esq., Marilyn S. Mense, Esq., Lukas, Nace, Gutierrez & Sachs, to Stephen L. Markendorff, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 28, 1998); Letter from Robert H. McNamara, Director, Regulatory Technology & Compliance, Nextel Communications, Inc. to Stephen L. Markendorff, Deputy Division Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 10, 1998).

[41] 47 C.F.R. § 90.621(b).

[42] *Id.* This mileage separation was derived from the Commission's finding that two co-channel, site-based SMR systems will generally operate effectively if the 30 dBu interference contour of one station does not overlap the 40 dBu service contour of another station. *See* Amendment of Part 90 of the Commission's Rules to Permit the Short-Spacing of Specialized Mobile Radio Systems Upon Concurrence from Co-Channel Licensees, *Report and Order*, PR Docket No. 90-34, 6 FCC Rcd. 4929 (1991) (*SMR Short-Spacing Report and Order*); Amendment of Part 90 of the Commission's Rules to Permit the Short-Spacing of Specialized Mobile Radio Systems Upon Concurrence from Co-Channel Licensees, *Corrected Memorandum Opinion and Order*, PR Docket No. 90-34, 7 FCC Rcd. 6069 (1992). This 40/30 dBμ contour standard is met if the two site-based co-channel facilities are separated by at least 113 km (70 miles). On certain mountain peaks in California and Washington, the separation between co-channel stations is 169 km (105 miles). 47 C.F.R. §§ 90.621(b)(1), 90.621(b)(3).

[43] 47 C.F.R. § 90.621(b)(5); *see SMR Short-Spacing Report and Order*, 6 FCC Rcd. at 4930, ¶ 9.

[44] 47 C.F.R. § 90.621(b)(4); *see SMR Short-Spacing Report and Order*, 6 FCC Rcd. at 4931, ¶ 15. For this latter case, we devised a table which reflected the permissible proximity between co-channel licensees whose systems are separated by less than 113 km (70 miles). Systems in compliance with the terms of the table are permitted to short-space on a non-waiver basis down to a minimum separation distance of 88 km (55 miles). 47 C.F.R. § 90.621(b)(4); *see SMR Short-Spacing Report and Order*, 6 FCC Rcd. at 4931, ¶ 15.

licensees.[45] Finally, Petitioners state that the software failed to grant certain applications that were permissible under the Commission's short-spacing rules because they included engineering showings demonstrating that no interference would be caused to adjacent stations.[46]

17. After review of petitioners' manually filed application, we find that petitioners have demonstrated that each of the applications at issue complied with either the Commission's consensual short-spacing rules, the technical short-spacing rules, or in many instances complied with both. In particular, eight of the petitioners submitted co-channel exhibits demonstrating that the proposed stations complied with the Commission's short-spacing separation table.[47] Further, nine of the petitioners provided confirmation that they (1) owned the co-channel licensees; (2) managed the co-channel licensees; or (3) obtained consent from the co-channel licensee to the operation of facilities co-channeled with their constructed and operational systems involving less than the usually required 70-mile separation distance.[48]

18. Given the fact that Petitioners have demonstrated that their applications were grantable under the Commission's short-spacing rules, we do not believe denial is warranted solely on the basis that Petitioners did not provide information in electronic format. While the record indicates that Petitioners' failure to provide this information as directed by the Bureau staff contributed to the applications not being recognized as grantable by the processing software, the Commission did have on hand all necessary information (albeit not solely in electronic form) justifying the grant of these applications. The primary rationales for dismissing the subject applications, then, were to ensure that the Bureau's efforts to expeditiously process the SMR application backlog worked, and that any *ad hoc* exceptions to this process would not undermine the principal means used in this process -- *i.e.*, the electronic filing procedure. Because an enormous number of applications were processed within a relatively short period of time, we conclude that, on the whole, the process worked quite well. Moreover, under the specific circumstances of this proceeding -- where all the information necessary for decision on the subject applications had been filed in accordance with the rules (which did not require electronic filing), where the electronic filing procedure employed was new and had presented various problems, and where the number of applicants requesting review based on non-electronically filed application material was small in comparison to the backlog -- we do not agree that the review of the manually filed applications submitted by Petitioners will undermine this procedure or similar ones that might follow. Accordingly, we conclude that the Bureau's decision to dismiss Petitioners' applications, while not altogether unreasonable, should be reversed. We are therefore ordering that these applications be granted.

19. Moreover, we conclude that grant of these applications will not prejudice other 800 MHz licensees. First, because we have imposed a freeze since August 9, 1994 on new site-based applications, and the Industry Coalition software was used to process all SMR applications that were pending prior to the freeze, there are no subsequent site-based license grants that would be affected by grant of

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45 *See e.g.*, Western at 5; Davis at 4; Pittencrief at 3-4; IC&E at 5-6.

46 *See e.g.*, Western at 5; Davis at 4-5; Pittencrief at 4; IC&E at 6.

47 Castle at 3; Davis at 3; IC&E at 4; Miller at 3; Palmer at 5.

48 Castle November 12, 1993 Request for Rule Waiver, Exh. 4; IC&E May 20, 1994 Request for Rule Waiver; Davis October 22, 1996 Petition for Partial Reconsideration, Supplement to Exh. A; Western December 6, 1993 Request for Rule Waiver, Exh. 4.

Petitioners' applications. Second, grant of Petitioners' applications does not reduce the geographic spectrum available to Economic Area (EA) licensees. Petitioners' applications were limited to requests for digital facilities which proposed the reuse of only those frequencies assigned to underlying participating analog systems.[49] Because these applications merely fill in digital sites within footprints already established by authorizations previously granted to Petitioners, they will enable Petitioners to add sites and frequencies only on spectrum that is already entitled to protection from interference by EA licensees.[50] Accordingly, we reinstate and grant Petitioners' applications listed in Appendix A.

20. Having granted Petitioners applications, we must also determine the construction requirements applicable to the licenses we are granting by this Order. To the extent this Order grants licenses to wide-area licensees who are within the extended construction periods of their wide-area systems, they may construct facilities in accordance with that deadline,[51] or may construct each site within one year of the effective date of this Order, whichever is later. Licenses granted by this Order to licensees whose extended construction periods have expired must construct each site no later than one year from the date of this Order. In those instances where a licensee finds that it cannot reasonably comply with these construction requirements, we will entertain requests for extensions of time, provided that the licensee explains fully why a waiver of our rules is warranted.

21. Finally, in a related matter, we find that a portion of Motorola's application, File Number 642816, was inadvertently approved as being properly short-spaced. On August 26, 1996, in partially granting Motorola's Petition for Partial Reconsideration, the Land Mobile Branch granted frequencies 861-865.0125 as part of Motorola's enhanced SMR system.[52] Hawaiian Wireless, Inc. (Hawaiian Wireless) filed a petition for reconsideration because it is the licensee of station WPDH511, which is co-channeled with Motorola's facilities with respect to those frequencies.[53] Hawaiian Wireless is not a

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[49] AMI at 1; Castle at 2; Davis at 2-3; IC&E at 2-4; Miller at 2; Motorola at 1-2; Nextel at 4-5; Palmer 2-3; PCI at 2; Western at 2-3.

[50] *See e.g.* Castle Request for Rule Waiver, Exh. 4; Davis Petition for Partial Reconsideration, Supplement to Exh. A; IC&E Request for Rule Waiver; Miller Petition for Partial Reconsideration, Exh. 1(a); Palmer Petition for Partial Reconsideration, Exh. 1(a); Western Request for Rule Waiver, Exh. 4. *See also* Motorola at 6; Nextel at 4; PCI Petition for Reconsideration at 4.

[51] On April 15, 1999, in response to a remand from the D.C. Circuit in *Fresno Mobile Radio, Inc., et al. v. Federal Communications Commission*, 165 F.3d 965 (D.C.Cir. Feb. 5, 1999), we tolled the construction periods of incumbent wide-area 800 MHz SMR licensees whose construction periods were still in effect, including certain Petitioners. "Wireless Telecommunications Bureau Temporarily Suspends Construction Timetable for Wide Area 800 MHz SMR Licensees Due to Court Remand," *Public Notice*, 14 FCC Rcd 6348 (1999). In a remand order in the *Fresno* proceeding, adopted on December 17, 1999, we determined that these wide area licensees should have the option of applying the construction and coverage requirements applicable to SMR licensees who obtained geographic EA licenses by auction. Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Memorandum Opinion and Order, FCC 99-399 at para. 12 (rel. Dec. 23, 1999). To the extent that Petitioners choose to exercise this option, they may incorporate the license grants authorized by this order into their showing of compliance with the EA construction and coverage requirements.

[52] Letter from Terry L. Fishel, Chief, Land Mobile Branch to Elizabeth R. Sachs, Esq., Marilyn I. Suchecki, Esq., Lukas, McGowan, Nace & Gutierrez (Aug. 26, 1996).

[53] Hawaiian Wireless Petition for Reconsideration at 1.

participant in Motorola's wide-area system, and did not give its consent to Motorola to obtain its channels at less than the normally prescribed mileage separation.[54] Further, Nextel, Motorola's successor in interest, concedes that these frequencies should not have been part of Motorola's wide-area application.[55] Accordingly, Hawaiian Wireless' Petition for Reconsideration is granted and the grant of the frequencies 861-865.0125 in Motorola's application, File Number 642816, is hereby set aside and vacated.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration, filed by Davis Electronics Company, Inc., the Petitions for Further Reconsideration, filed by Industrial Communications & Electronics, Inc., Palmer Communications Inc., Western Wireless, Motorola Inc. and Castle Tower Corp., and William R. Miller are hereby GRANTED.

23. Accordingly, IT IS FURTHER ORDERED that, pursuant to sections 4(i), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, the Applications for Review filed by Motorola, Inc. and Nextel Communications, Inc., Advanced MobileCom of Texas, L.P., Nextel Communications, Inc., Pittencrieff Communications Inc., and Speed-Net are hereby GRANTED.

24. IT IS FURTHER ORDERED that pursuant to sections 4(i), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405, and sections 1.106 and 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115. Petitioners' applications for frequencies within the 800 MHz SMR service that are listed in Attachment A ARE REINSTATED and GRANTED.

25. IT IS FURTHER ORDERED that Hawaiian Wireless Inc.'s Petition for Reconsideration IS GRANTED, and that the portion of the Land Mobile Branch's Order granting frequencies 861-865.0125 as part of Motorola, Inc.'s enhanced SMR system application, File Number 642816, IS VACATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

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54 *Id.* at 2.

55 Motorola at 3 n.6.

ATTACHMENT A

EA	state	Licensee	call sign/file nos.	frequencies	latitude	longitude
134	TX	ADVANCED MOBILE COMM OF TEXAS, L.P.	KNRR870	856-860.0125, 856-860.0375, 856-860.0625, 860.1125, 860.6375, 860.6625	293105	0983410
131	TX	ADVANCED MOBILE COMM. OF TEXAS, L.P.	KNRR875	856-860.6875	301158	0963748
131	TX	ADVANCED MOBILE COMM. OF TEXAS, L.P.	KNRR881	856-857.0375, 859.0375, 857-	284211	0955640
134	TX	ADVANCED MOBILE COMM. OF TEXAS, L.P.	KNRR882	856-860.6875	294940	0980703
70	KY	DAVIS ELECTRONICS CO., INC.	651424	861-865.1375, 861-865.7125, 861-865.7875, 856.0375	380449	854747
70	KY	DAVIS ELECTRONICS CO., INC.	651426	861-865.7125	382723	852528
70	KY	DAVIS ELECTRONICS CO., INC.	651427	861-864.3875	380137	845259
47	KY	DAVIS ELECTRONICS CO., INC.	651428	861-864.3875, 856-860.5875	380222	842411
70	IN	DAVIS ELECTRONICS CO., INC.	WPJR821	861-865.1375, 861-865.7125, 861-865.7875	382130	855101
70	KY	DAVIS ELECTRONICS CO., INC.	WPJR823	861-865.1375, 861-865.7125	374917	860351
127	TX	MILLER, WILLIAM	683902	856-860.6125	324553	0974937
127	TX	MILLER, WILLIAM R	689443	856-860.6125	333843	0974908
127	TX	MILLER, WILLIAM R	689439	856-860.6125	324553	0974937
127	TX	MILLER, WILLIAM R	689440	856-860.6125	322705	0974636
127	TX	MILLER, WILLIAM R	689441	856-860.6125	325105	0980631
127	TX	MILLER, WILLIAM R	689442	856-860.6125	334034	0963504
127	TX	MILLER, WILLIAM R	689449	856-860.6125	324814	0980811
174	PR	MOTOROLA, INC.	642823	861-865.0125, 861-865.2375, 861-865.4875, 861-865.7375	180914	665928
174	PR	MOTOROLA, INC.	642821	861-865.0125, 861-865.2375, 861-865.4875, 861-865.7125, 861-	181616	660402
174	PR	MOTOROLA, INC.	KNRP992	861-865.0125, 861-865.2375, 861-865.4875, 861-865.7375	181042	663531
174	PR	MOTOROLA, INC.	KNRP993	861-865.0125, 861-865.2375, 861-865.4875, 861-865.7125, 861-	182605	660335
174	PR	MOTOROLA, INC.	KNRP994	861-865.0125, 861-865.2375, 861-865.4875, 861-865.7375	181845	654728
3	NH	NEXTEL COMMUNICATIONS, INC.	KNRQ200	851.8625, 851.9625, 852.8625, 852.8875, 853.8625, 853.9125, 854.8625, 854.9125	435729	713326
134	TX	NEXTEL COMMUNICATIONS, INC.	KNRR877	856-860.0125, 856-860.0375, 856-858.0625, 856.6875, 857-859.8875, 860.1125, 860.0625	291104	985816
10	NJ	NEXTEL COMMUNICATIONS, INC.	655316	856-857.0375	402343	741020

ATTACHMENT A

EA	state	Licensee	call sign/file nos.	frequencies	latitude	longitude
31	FL	NEXTEL COMMUNICATIONS, INC.	673297	856.5375	270635	804826
122	KS	NEXTEL COMMUNICATIONS, INC.	604485	856.6125, 858.6125, 859.6125	374343	971942
170	WA	NEXTEL COMMUNICATIONS, INC.	604574	859.1375, 860.1375	464058	1220144
141	CO	NEXTEL COMMUNICATIONS, INC.	604778	856-860.0125, 856-860.1125, 856-860.1625, 856-860.5375, 856-860.5625, 856.6125, 858.6125, 859.6125	393808	1062646
12	MD	NEXTEL COMMUNICATIONS, INC.	651886	856-860.5125	393713	755921
10	CT	NEXTEL COMMUNICATIONS, INC.	654792	857-860.1625	413340	725037
10	NJ	NEXTEL COMMUNICATIONS, INC.	655318	856-860.0375, 856-860.5625,	402343	741020
163	CA	NEXTEL COMMUNICATIONS, INC.	662002	856-860.5625, 857-860.0125	374759	1211016
83	LA	NEXTEL COMMUNICATIONS, INC.	669895	861.1125, 861.1625	302307	895520
85	LA	NEXTEL COMMUNICATIONS, INC.	669900	856-860.0375	293737	922224
84	LA	NEXTEL COMMUNICATIONS, INC.	669906	857.1875	300618	910121
85	LA	NEXTEL COMMUNICATIONS, INC.	669916	856.5375	294122	911327
84	LA	NEXTEL COMMUNICATIONS, INC.	669917	856-858.6875	302706	911116
84	LA	NEXTEL COMMUNICATIONS, INC.	669918	856-857.1125, 856-858.6875	302556	911106
84	LA	NEXTEL COMMUNICATIONS, INC.	669919	856-857.6875	302530	910702
153	NV	NEXTEL COMMUNICATIONS, INC.	670792	861.3625	361920	1145545
153	NV	NEXTEL COMMUNICATIONS, INC.	670795	861.3625	361344	1151311
153	NV	NEXTEL COMMUNICATIONS, INC.	670797	861.3625	360714	1151826
153	NV	NEXTEL COMMUNICATIONS, INC.	670798	861.3625	355851	1144941
153	NV	NEXTEL COMMUNICATIONS, INC.	670800	861.3625	354700	1151952
153	NV	NEXTEL COMMUNICATIONS, INC.	670801	856-860.0125, 856-860.0375, 856-860.0625, 856.1375, 856-860.1875, 856-860.5375, 856-860.6125, 861.1625, 861.3625, 861.4125	354827	1152804
153	NV	NEXTEL COMMUNICATIONS, INC.	670802	856-860.0125, 856-860.0375, 856.1375, 856-860.1875, 856-860.5375, 856-860.6125	350959	1143420
153	NV	NEXTEL COMMUNICATIONS, INC.	670803	861.3625	360438	1150410
153	NV	NEXTEL COMMUNICATIONS, INC.	670805	861.3625	355838	1150908
153	NV	NEXTEL COMMUNICATIONS, INC.	670807	861.3625	361326	1150500
31	FL	NEXTEL COMMUNICATIONS, INC.	673292	856-860.5375	270720	802321
30	FL	NEXTEL COMMUNICATIONS, INC.	673295	856-857.0625, 859-860.0125, 859-860.0625	281550	811900
32	FL	NEXTEL COMMUNICATIONS, INC.	673299	856-857.0625, 859-860.0625, 856-860.5625	261559	814334

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EA	state	Licensee	call sign/file nos.	frequencies	latitude	longitude
31	FL	NEXTEL COMMUNICATIONS, INC.	673305	856-860.5125	254625	801118
30	FL	NEXTEL COMMUNICATIONS, INC.	673308	859-860.0125	273841	813918
153	NV	NEXTEL COMMUNICATIONS, INC.	678158	856-860.0875,856-860.5875, 856-860.6375, 856-860.6625, 861.0125, 861.0375, 861.1125, 861.2125, 861.2375, 861.2625, 861.4375, 861.4625	354827	1152804
12	DE	NEXTEL COMMUNICATIONS, INC.	KNRS291	856-860.5125	393803	754510
13	MD	NEXTEL COMMUNICATIONS, INC.	KNRT292	859.0625	383038	770006
163	CA	NEXTEL COMMUNICATIONS, INC.	KNRT296	856-860.5625, 857-860.0125	374755	1211010
163	CA	NEXTEL COMMUNICATIONS, INC.	KNRT297	856-860.5625	380804	1211310
83	LA	NEXTEL COMMUNICATIONS, INC.	KNRU242	861.0125, 861.1125	305300	895635
84	LA	NEXTEL COMMUNICATIONS, INC.	KNRU245	860.6375	303009	911228
172	HI	NEXTEL HAWAII ACQUISITION CORP	642818	856-860.0375, 856-860.1375, 856-860.5375,861-862.08375, 861-862.3375, 861-862.4875, 861-861-862.0875, 861-862.3375, 861-	212529	1574951
172	HI	NEXTEL HAWAII ACQUISITION CORP	KNRU916	862.4875, 861-862.5625	211642	1574929
172	HI	NEXTEL HAWAII ACQUISITION CORP	KNRU947	856-860.0875	194309	1555440
172	HI	NEXTEL HAWAII ACQUISITION CORP	KNRU949	856-860.0125, 861-862.0125, 861-862.0875, 861-862.1375, 861-862.3375, 861-862.3875, 861-862.4375, 861-862.5625, 861-862.6875, 861-862.8375, 861-862.8625, 861-862.9375	215633	1592743
172	HI	NEXTEL HAWAII ACQUISITION CORP	KNRU950	856-860.1875	204118	1562201
172	HI	NEXTEL HAWAII ACQUISITION CORP	KNRU951	861-862.0875, 861-862.2375, 861-862.3375, 861-862.4875, 861-862.5625, 861-862.7375, 861-	212111	1575444
172	HI	NEXTEL HAWAII ACQUISITION CORP	KNRU998	861-862.4375, 861-862.6875, 861-862.9375, 861-862.9875	195327	1552308
100	IA	PALMER COMM., INC DBA ILLOWA COMMUNICATIONS	687263	856-860.0125, 861-865.1625, 856-860.5125, 861-865.6125	414833	933653
134	TX	PITTENCRIEFF COMMUNICATIONS	650706	856-860.6125	293028	983423
125	OK	PITTENCRIEFF COMMUNICATIONS	658735	856-860.6625	352651	972847
125	OK	PITTENCRIEFF COMMUNICATIONS	658738	856-860.0125, 856-860.1875, 856-860.5125, 856-860.6625	353336	972907
131	TX	PITTENCRIEFF COMMUNICATIONS	KNRR879	855.2625, 860.6875	300827	960705

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EA	state	Licensee	call sign/file nos.	frequencies	latitude	longitude
131	TX	PITTENCRIEFF COMMUNICATIONS	KNRR880	856.0625, 856-860.5625, 856-860.6875, 860.6625	295232	965239
130	TX	PITTENCRIEFF COMMUNICATIONS	KNRR983	860.1125	301443	975524
130	TX	PITTENCRIEFF COMMUNICATIONS	KNRR984	860.1125	301910	974806
130	TX	PITTENCRIEFF COMMUNICATIONS	KNRR985	856-860.1125	300735	971721
134	TX	PITTENCRIEFF COMMUNICATIONS	KNRR987	856 860.6125	293106	983418
17	VA	SPEED-NET	655172	856-859.5375, 856-860.5625	371113	0802727
20	NC	SPEED-NET	655175	857-860.1375, 856-860.5375, 856-860.5625, 856-860.6375, 856-857-860.1375, 856-859.5375, 856-	361556	0770629
21	NC	SPEED-NET	655176	860.5625, 859.6375, 856-860.6625	352449	0761934
13	VA	SPEED-NET	655178	857-858.5625	384750	0771045
17	VA	SPEED-NET	655179	857-860.1375, 856-860.5375, 857.6375, 856-860.6625	364359	0785603
14	DE	SPEED-NET	655180	857-860.1375	383836	0751300
20	MD	SPEED-NET	655181	859-860.1375, 856-860.5625, 856-860.6375, 856-860.6625	371656	0764403
13	MD	SPEED-NET	655182	857-858.5625	390226	0770319
20	VA	SPEED-NET	655185	857-860.1375, 856-860.6375	365206	0755859
13	MD	SPEED-NET	655186	857-860.1375, 856-860.5375, 856-860.5625,856-860.6375	392938	0772955
12	DE	SPEED-NET	655187	857-860.1375, 856-860.5375, 856-860.5625, 856-860.6625	385716	0760534
12	DE	SPEED-NET	655188	857-860.1375, 856-859.5375	390413	0753324
21	NC	SPEED-NET	655193	857-860.1375, 856-860.5375, 856-860.5625, 856-860.6625	353433	0772649
13	VA	SPEED-NET	655195	857-860.1375, 856-860.5375, 856-860.5625, 856-860.6375, 856-860.6625, 859.8125	361208	0772529
16	VA	SPEED-NET	655198	857-860.1375, 856-860.6375, 856-860.6625	382651	0784354
21	NC	SPEED-NET	655203	857-860.1375, 856-860.5375, 856-860.5625, 856-860.6375, 856-857-860.1375, 856-860.5375, 856-	360013	0753913
13	MD	SPEED-NET	655204	860.5625	393154	0763250
13	VA	SPEED-NET	655205	857-860.1375, 856-860.5375, 856-860.5625, 856-860.6375, 856-	383742	0772620

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EA	state	Licensee	call sign/file nos.	frequencies	latitude	longitude
13	MD	SPEED-NET	655210	857-860.1375, 856-860.5375, 856-860.5625, 856-860.6375, 856-	382449	0764631
15	VA	SPEED-NET	655211	856-857.1375, 859-860.1375, 856-860.6375, 856-860.6625	373014	0774153
20	VA	SPEED-NET	655212	856-860.6375	365030	0761700
17	VA	SPEED-NET	655218	856-860.5625	371107	0801006
13	MD	SPEED-NET	655242	856-857.1375, 859-860.1375, 856-859.5375, 856-860.5625, 859.6375, 856-860.6625	351217	0755642
15	VA	SPEED-NET	655243	856-860.6625	375859	0782855
15	VA	SPEED-NET	655244	856-860.6625	375903	0782852
13	VA	SPEED-NET	662650	859.8125	361208	0772529
16	VA	SPEED-NET	684033	856-857.1375, 859-860.1375, 856-860.6375, 856-860.6625, 859.8125	380955	0791850
17	VA	SPEED-NET	684034	859-860.1375, 860.6375, 856-860.6625, 859.8125	373347	0791138
16	VA	SPEED-NET	684388	859.8125	380352	0784818
16	VA	SPEED-NET	684390	856-857.1375, 859-860.1375, 856-860.6375, 856-860.6625	382651	0784354
160	AZ	WESTERN WIRELESS	650485	856.3500, 858.3500, 860.3750, 856.4000, 859.4000, 861.4000, 856-859.4500, 856.5250, 858.5250, 862.5500, 863-865.6000, 860.6250, 859.6500	324004	1140213
161	CA	WESTERN WIRELESS	650486	860.3750, 859.4000, 861.4000, 858.4500, 862.5500, 863-865.6000, 856-860.7250, 856-860.9000	331832	1165038
160	CA	WESTERN WIRELESS	650487	856.3375, 858-859.3375, 861-856-860.0875, 861-865.6875, 861-	335158	1162605
160	CA	WESTERN WIRELESS	650488	865.9375	333608	1172035
160	CA	WESTERN WIRELESS	650489	861-865.3875	345817	1170222
161	CA	WESTERN WIRELESS	650490	860.3750, 859.4000, 861.4000, 858.4500, 856.5250, 858.5250, 862.5500, 863-865.6000, 856-860.9000, 856-860.725, 861-865.900	323616	1165026

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EA	state	Licensee	call sign/file nos.	frequencies	latitude	longitude
160	CA	WESTERN WIRELESS	650491	861-865.7000, 861-865.7500, 861-865.8000, 861-865.8500, 862.5500, 863-865.6000, 856.3500, 858.3500, 860.3750, 856.4000, 859.4000, 857-859.4500, 856-860.7250, 856-860.8000, 856-857.8500, 856-860.9000, 856.9750, 858.9750, 860.9750, 856.5250, 858.5250, 856-860.7750, 859.6500, 860.6250, 861.9750	333412	1142056
160	CA	WESTERN WIRELESS	650492	856-860.0875	330319	1144939
160	CA	WESTERN WIRELESS	650493	856-860.0875	341147	1170255
160	CA	WESTERN WIRELESS	650494	856.3500, 858.3500, 860.3750, 856.4000, 859.4000, 861.4000, 856-859.4500, 856.5250, 858.5250, 862.5500, 863-865.6000, 860.6250, 859.6500, 861-865.7000, 856-860.7250, 856-860.8000, 861-865.8000, 856-860.9750	330319	1144939
160	CA	WESTERN WIRELESS	650495	860.3750, 859.4000, 858-859.4500, 856.5250, 858.5250, 856-860.8750, 856-860.9750	325642	1154757
160	CA	WESTERN WIRELESS	650496	856.3500, 858.3500, 860.3750, 856.4000, 859.4000, 857-859.4500, 856.5250, 858.5250, 860.6250, 856-857.7250, 860.7250, 856-860.8000	333919	1152712
160	CA	WESTERN WIRELESS	650497	856-860.0375, 856.3375, 858-859.3375, 858-859.3625, 858.7875, 856-857.8125, 860.8125, 856.8375, 859.9125, 861-865.9875	334808	1161327
161	CA	WESTERN WIRELESS	KNRR959	860.9000, 858.4500, 859.4000, 860.3750, 861.4000, 862.5500, 863-865.6000	331800	1165020
161	CA	WESTERN WIRELESS	KNRR960	856-860.9000, 857-860.7250, 858.4500, 859.4000, 860.3750, 861.4000, 862.5500, 863-865.6000	330004	1165811

CERTIFICATE OF SERVICE

I, Jennifer Roy, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 19th day of June, 2000, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing pleading to the following:

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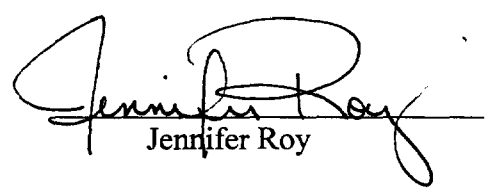

Jennifer Roy